

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

United States of America

v.

Civil No. 11-cr-06/01-JL

Brian E. Mahoney

**O R D E R**

On April 22, 2011 (doc. no. 26) and October 11, 2011 (doc. no. 50), the court issued orders pursuant to 18 U.S.C. § 4241 that the defendant undergo psychiatric and psychological evaluations to determine if he is competent to stand trial. Forensic reports of the evaluations prepared by Dr. Eric G. Mart and Dr. Miriam Kissin, have been filed with the court with copies provided to counsel. (Court exhibits A, B, and C, all under seal).

A hearing was held on April 5, 2012 with counsel and the defendant present, to review the reports and take testimony from both doctors. During the course of the hearing (and several prior hearings in this case), the defendant presented himself in a very agitated state, and while he appeared to generally understand what was transpiring, he exhibited serious misunderstandings of several procedural and constitutional concepts.

In accordance with the standard set forth in 18 U.S.C. § 4241(d), the court finds, after considering the evaluation

reports and observing the defendant, by a preponderance of the evidence that the defendant is presently suffering from mental diseases or defects (bipolar disorder, personality disorder NOS with antisocial or narcissistic features, problems related to interaction with the legal system/crime) rendering him mentally incompetent to assist properly in his defense, and/or to conduct his own defense (as he desires to do).

The court has given careful consideration to the distinction between proceeding pro se (representing himself) and assisting defense counsel in his defense. The court has no hesitation in ruling that Mr. Mahoney is not competent to represent himself. His acute mania, manifested by his pressured speech, loose associations and tangential thoughts expressed with ever-increasing rapidity, his grandiosity, and his apparent delusions make it impossible for him to conduct his own defense in a way that would be comprehensible to any trier of fact, and certainly to any jury.

Mr. Mahoney's potential ability to assist counsel in his defense is less clear to the court. The court's review of the three psychological evaluation reports, the testimony presented in court, and the court's observations lead the court to believe that, if sufficiently and properly medicated, Mr. Mahoney might be able to assist defense counsel at trial. This issue is largely moot, however, because Mr. Mahoney has sought the

discharge of three separate and very competent defense attorneys. His stated reasons for the requested discharges have been completely unsatisfactory and unsubstantiated, and were granted only in an attempt by the court to assuage Mr. Mahoney's irrational and unsubstantiated accusations and delusions about the attorneys, in an effort to place him in an emotional and mental state that would facilitate his assistance of defense counsel. He has explained to the court, however, in excruciating and irrational detail, that his advanced and unparalleled knowledge of both the facts and law applicable in this case make him the only person capable of providing an effective defense. Thus, even if, dubitante, Mr. Mahoney is able to assist defense counsel, he is unable and/or unwilling to be represented by counsel.

Therefore, the defendant is committed to the custody of the Attorney General of the United States who shall hospitalize him for treatment in a suitable facility for a reasonable period of time, not to exceed four months, to determine whether there is a substantial probability that in the foreseeable future he will obtain the capacity to permit the trial to proceed. This time can be extended by order of the court in accordance with the provisions of 18 U.S.C. § 4241(d)(2)(A) or (B).

The director of the facility in which the defendant is hospitalized shall file periodic reports, no less frequently than

every 45 days starting from the date of this order, as to the defendant's mental status and any progress or lack thereof in the treatment being provided to him to render him mentally competent to stand trial.

**SO ORDERED.**

  
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Joseph N. Laplante  
United States District Judge

Dated: June 29, 2012

cc: Andrew R. Schulman, Esq.  
Arnold H. Huftalen, AUSA

Enclosures:

1. Sealed 7.18.11 Report by Dr. Kissin
2. Sealed 10.20.11 Report by Dr. Mart
3. Sealed 3.29.12 Report by Dr. Mart